

## 2008 Legislative Update

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Most people had written it off. It wended its way through the legislative process sluggishly. Not until the 11<sup>th</sup> hour was the Loan Originator Licensing Bill passed. Below is a summary of this and other relevant pieces of legislation signed into law by Governor Napolitano in 2008.

### LENDING AND CREDIT

Effective January 1, 2010, loan originators will begin a relationship with their employers much like that of a real estate agent to a real estate broker. **Senate Bill (SB) 1028** mandates that prelicensure school, testing, licensing, fees, and regulations regarding duties and conduct will apply. Continuing education will be required annually when renewing a loan originator's license.

In some ways, loan originator licensing is stricter than real estate licensing. If indicted for certain crimes, loan originators can be treated as guilty until proven innocent, having their license stripped away until trial. A loan originator candidate may not take the prelicensure test more than twice in 12 months. If the license is denied, the candidate may not reapply for one year. There are also limits on periods of inactivity.

Those with loan origination experience in the most recent three years may be exempted from the educational requirement. There are also exemptions from the licensing law when commercial lending is done, and in certain other situations.

Two additional bills affect lenders. **SB 1029** changes the lender license renewal dates to allow Arizona licensees to participate in the Nationwide Mortgage Licensing System (NMLS). NMLS allows states to coordinate with one another so a loan originator with complaints or violations in one state would not be able to simply move to a new state and have a clean record. About 80% of the states are presently on board with this system. **SB 1285** opens cease-and-desist orders to public inspection if they are related to unlicensed lending activity.

With regard to credit issues, **SB 1185** allows a person to request a credit reporting agency to "freeze" their credit report, restricting the release of information without authorization by the consumer. Lenders may treat applications as incomplete if access is frozen; however, businesses must lift the freeze within 15 minutes of receiving an authorized electronic or telephonic request. There is no cost to place a "freeze" on one's credit report if the person has been a victim of identity theft (things are probably bad enough, wouldn't you agree?). However, if the requestor has *not* been a victim of identity theft, then a small fee may be charged for each security freeze, for each request that the freeze be lifted, or when a new or reissued password or PIN is needed. This law does not make a provision for those who can't afford the fee(s), but then again, maybe stealing *that* person's identity isn't the best idea. August 31, 2008 is the effective date of this law.

**House Bill (HB) 2587** prohibits a lender from lending unless steps are taken to verify the consumer's identity.

If a person's identity is stolen and his or her identity is then used to commit a crime or results in a judgment against the person, **HB 2321** establishes a process where a person can obtain a court order stating he or she is innocent. This law goes into effect on January 1, 2009.

### DIVORCE

**SB 1112** allows the court to consider debts and obligations when dividing community property in a divorce or legal separation. One premise is that a property which is free and clear is worth more than one transferred with an encumbrance intact, or with taxes owed against it. This bill also addresses exempt properties, child support and spousal maintenance.

### WATER, FLOOD CONTROL & INFRASTRUCTURE

Arizona Department of Water Resources (ADWR) will be required by **HB 2270** to post an advisory alerting potential home buyers to research water availability before they purchase, and to define, in layperson's language, terms like "adequate water supply", "inadequate water supply" and "no water supply determination". Effective January 1, 2009, cities, towns and private water providers which are outside of an active management area (AMA) must provide a written statement within three days of being requested regarding the water supply status of a property. The description must be based on the most recent ADWR determination, and must include the applicable water supply term definition as posted on ADWR's website. In other words, weasel-wording will be monitored closely, and there will be no selling the sizzle unless there is a steak.

**SB 1289** establishes mechanisms to keep flood protection facilities current. Assessments are one financial option to fund the improvements and repairs. If an assessment is done, it will become a lien against the property. This law allows the property to be sold in the event of a delinquent assessment.

It is a Class 5 felony for a city, county, town, school district, or tribal law enforcement agency employee to knowingly divulge critical infrastructure information. **HB 2466** exempts critical infrastructure information provided to any local government from public disclosure.

Similar in content, **HB 2371** addresses the security of critical infrastructure used for the transmission of natural gas, petroleum or aviation fuel. One of the more interesting provisions of this law "exempts subdividers from having to disclose critical infrastructure information to the state real estate commissioner." Mmm... I wonder what will happen after Mom and Pop Q. Homebuyer purchase the lot that is bellied up to the natural gas pipeline that wasn't mentioned in the public report.

#### MILITARY

**SB 1387** imposes certain requirements for cities, counties and towns that have a military electronics range located within their boundaries (think Fort Huachuca). These include notification when a property is rezoned, when a building or development permit is issued, or when the property is subdivided. The Real Estate Department will record a document that discloses the military electronics range, and will post a map on the ADRE website. Public reports (now referred to as Subdivision Disclosure Reports by ADRE) which are issued after January 1, 2009 will be affected, and the Affidavit of Disclosure document language must be updated.

Our military personnel who hold professional licenses receive a break with **SB 1006**, which establishes an extension of the license period and relief from late fees if the military member is deployed and meets certain criteria.

#### MUNICIPAL REGULATION

**SB 1385** requires cities of 50,000 or more to promote home ownership in their general plans. Also included is an assistance provision for maintaining and improving the appearance of commercial and residential buildings.

Municipalities and counties are to adopt standards for issuing solar permits, and are prohibited from requiring a stamp from a professional engineer based on the language in **HB 2615**.

#### CONTRACTOR REGULATIONS

Revisions to state laws regarding mechanic's liens and surety bonds are contained in **HB 2474**, and **SB 1417** revises the complaint and citation procedures against licensed contractors.

#### TAXES AND INSURANCE

Several pieces of legislation addressed property taxes. **HB 2523** addresses the unfortunate situation when a tax lien is sold on a sliver of land running through a parcel the owner thought he or she owned (entirely), and the tax lien for that slice of property is foreclosed. Now, the property tax lien may be offered by the County Board of Supervisors to the landowner of the surrounding property. **HB 2351** clarifies that interest begins to accrue on the first day of the month following the purchase of a tax lien. **HB 2032** allows a tax lien purchaser to foreclose between three and 10 years after the sale of the property tax lien. **HB 2130** now allows a "homesite" in Class 3 owner-occupied residential property to contain up to 10 acres, and in certain instances, up to 40 acres. The last provision becomes effective January 1, 2009.

**HB 2513** addresses "stranger originated life insurance", where an investor purchases a life insurance policy on another person for the investor's own benefit. This legislation was in response to a practice where individuals with short life expectancies sold their policies to investors for cash settlements.

#### REAL ESTATE

The Business Brokerage Designation was eliminated as a real estate licensure option with **SB 1232**. This bill also clarifies what personal information ADRE may withhold from the public about a licensee. The section of this bill pertaining to the confidentiality of email addresses is retroactive to January 1, 2008.

Purchaser dwelling actions are legal actions taken by a buyer against a seller because of design, construction, condition or sale issues. Redefining the term "seller", as done by **SB 1176**, results in real estate agents, brokers and entities no longer being lumped into the "seller" category in a lawsuit. Resale licensees are expressly excluded from the definition.

**SB 1491** requires ADRE to record a notice to the public when land has been unlawfully subdivided. Those who subdivide without a public report may incur penalties of up to \$5000 for each infraction beginning December 31, 2008. The statute also adds language to the Affidavit of Disclosure document, which states, *"Use of the property [is/is not] limited in any way relating to an encumbrance on title due to a lis pendens, a court order or a State Real Estate Department order of a pending legal action. If the use of the property is limited, the seller or property owner shall disclose the limitations to the buyer."*

Interestingly enough, human smuggling and drop house legislation has a real estate component. According to **HB 2842**, a Class 4 felony can be assigned to persons or companies that own, sell, lease or broker a transaction involving property that will be used as a drop house. Licensees have a defense if they discover the property is being used as a drop house after the transaction occurs and the licensee reports it to law enforcement.

## GUARDIANS, CONSERVATORS AND TRUSTEES

Those acting on behalf of others may well have some extensive reading to catch up on. Guardians and conservators are affected by **HB 2836**, and trustees will find the Arizona Trust Code has been completely rewritten in **HB 2806**.

## CONDOS & HOMEOWNERS' ASSOCIATIONS

The 2008 legislation further erodes the powers of the homeowners' association (HOA). **HB 2440** prohibits a HOA from forbidding the circulation of political petitions, although gated communities are exempt. **HB 2410** brings open meeting laws into the information age. If a member of a public body expresses an opinion or discusses an issue either personally, through public broadcast, or at a venue other than an actual meeting, the member is not in violation of open meeting laws if the opinion is not directed at another public official and there is no plan to take legal action. Blog on!

## EMPLOYER ISSUES

**HB 2745** contains emergency measures to the Legal Arizona Workers Act, addressing identity theft, the practice of paying employees in cash, using E-Verify, and the issuance of business licenses—a "must read" for those who employ others.

The effective date of legislation from the Forty-Eighth Legislature—Second Regular Session is September 26, 2008. Additional information on the bills highlighted above may be obtained at [www.azleg.gov](http://www.azleg.gov).

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